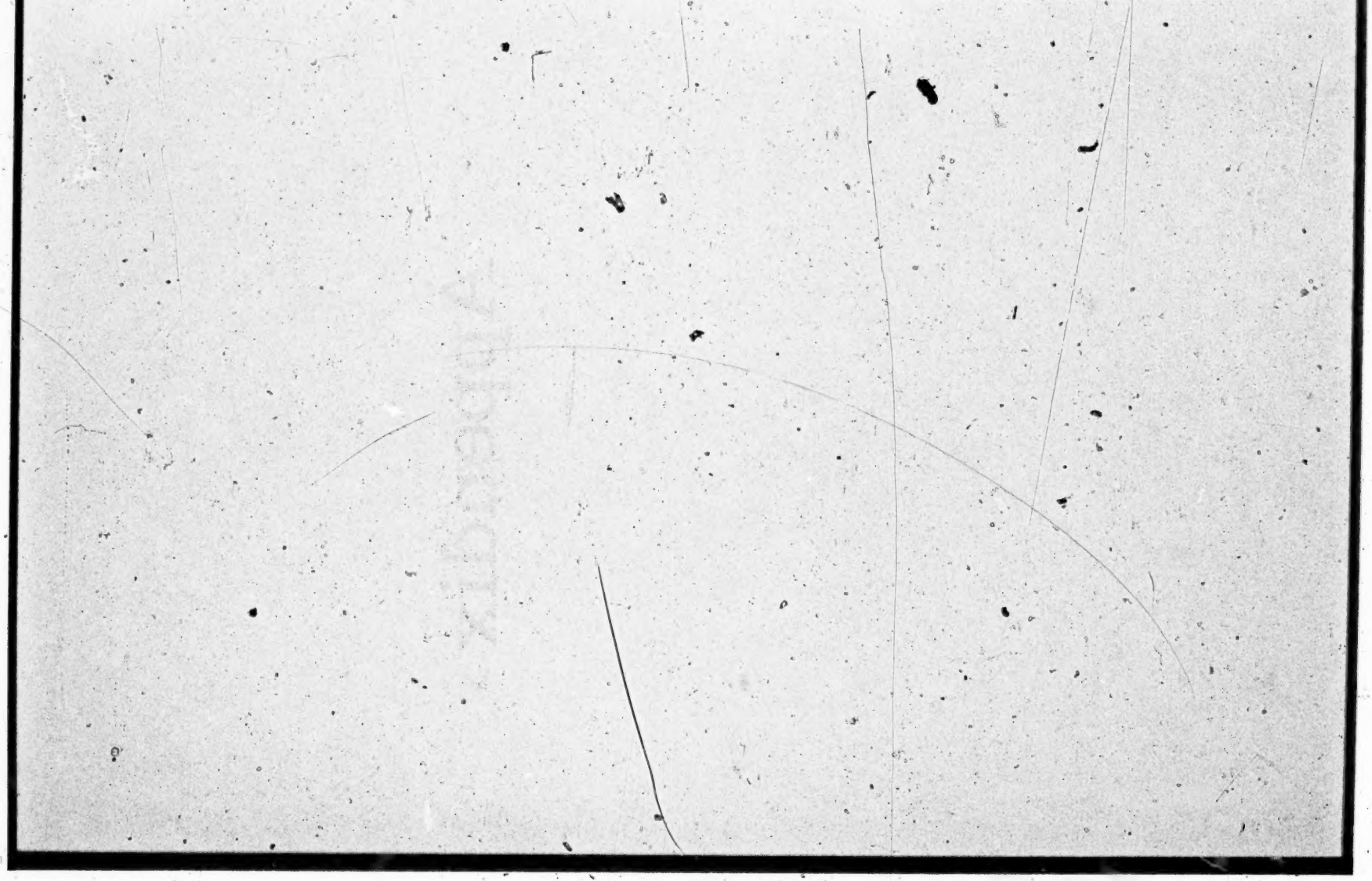


APPENDIX "A"

EXCERPT OF OPINION

Phillips v. Glazer

94 C.A. 2d 673, 676- 677; 211 P, 2d 37.

The witness Barstow testified as follows: I am a licensed realtor. I had a listing from Mrs. Krieger. I brought a prospective buyer to view Parcel 20, Malibu Colony. I asked $35,000 for it. On my second visit with the prospect I noticed the sign on the garage of Parcel 19. "Q. What if anything was said by you and the prospective purchaser concerning that sign? MR. BUTTS: To which we object on the grounds it is hearsay. THE COURT: Objection overruled. A. I went into the house and I said to Mrs. Krieger, 'What in the world is this sign doing on the garage?' THE COURT: The question is, what did the purchaser say? A. She said 'What is this sign up here?' and I said, 'Well, I don't know. I will have to ask Mrs. Krieger. I have never seen this before.' The prospect went in with me to see Mrs. Krieger about it. We had some conversation. The prospect did not take the place. She said she would not be interested in buying the place if there was any question of the title. I said I would have to investigate it thoroughly before I would do anything further with it. She made no objection to the price as being unreasonable. Q. Did you as a realtor tell Mrs. Krieger what you were going to do about trying to

handle the house, or did you do any- thing further? MR. BUTTS: I object to the question on two grounds, it is hearsay and calling for a conclusion. THE COURT: Objection overruled on both grounds. A. Yes, I went into the house and asked Mrs. Krieger what the sign meant, and she said not to pay very much attention to it. I said nobody would buy a piece of property with that sign standing there because people are not buying property where there is a clouded title. And she said, 'The only thing you can do is wait until I see how this thing is going to work out.' I then discontinued making efforts to sell the place."

The rulings indicated in the foregoing resume are assigned as prejudicial. It is contended that the statements ascribed by the witnesses to prospective purchasers were hearsay and incompetent. In the same breath appellant admits it is "an exception to the hearsay rule when the intentions, feelings or mental state of a certain person at a particular time is material to the issues," citing *Adkins v. Brett,* 184 Cal. 252 [193 P. 251]; *Estate of Carson,* 184 Cal. 437 [194 P. 5, 17 A.L.R. 239]; *Cripe v. Cripe,* 170 Cal. 91 [148 P. 520]. These authorities establish the rule that such declarations when used not to prove the truth of the matter asserted but to establish the state of mind of the declarant are not within the hearsay rule. That rule does not exclude evidence of a statement when the act of making it is significant irrespective of the truth or falsity of its content. (*Werner v. State Bar,* 24 Cal.2d 611, 621 [150 P.2d 892]; *People v. Radley,* 68 Cal.App.

2d 607, 609 [157 P.2d 426]; 10 Cal.Jur. §288, p. 1036.) The declarations ascribed by the witnesses in the instant action were not to prove the truth of the declarations but to prove the state of mind of the declarant when he read the sign of appellant. The court's rulings were in the interest of justice. They enabled respondents to show that the presence of the sign caused prospective purchasers to abandon their desires to purchase Parcel 20. A contrary ruling would have been grievously erroneous.

APPENDIX "B"

EXCERPT FROM REPORTER'S TRANSCRIPT
(Pages 186-189)

BY MR. FAIRFIELD:

Q. Have you Exhibit 20 there before you now, Mr. Agrell?

A. Yes.

Q. Now, I think your testimony yesterday was that when you had received Exhibit No. 20 you paid no attention to the picture?

A. Yes.

Q. And that you did not see the legend on the bottom of Exhibit No. 20 which said, "New Modern Facility in Ohito"?

A. Yes.

Q. Did you read that at all when you received Exhibit No. 20?

A. It is possible that I did.

Q. Pardon?

A. It is possible that I read it.

Q. I see. Well, now, did you look at the picture at all?

A. No.

Q. Now, in looking at your picture, or looking at

the letter, did you notice on the picture of the factory the word "TEC"?

A. No.

Q. You didn't notice that at all?

A. No. I am not using magnifying glasses when reading letters.

Q. Is it your testimony then, Mr. Agrell, that without a magnifying glass you cannot see the letters "TEC"?

A. Very difficult.

Q. Well, now, take a look at the letters now with your regular glasses. Do you see the letters "TEC"?

A. It is very difficult to read.

Q. Now, alongside of the letters are some characters which are in Japanese. Do you see that?

MR. SHEA: May I have that last question, please?

(The question was read.)

MR. SHEA: I object to the characterization that they are in Japanese because I don't know that Mr. Fairfield speaks or writes Japanese and besides that, looking at them, I would have difficulty comparing some of the Japanese symbols that are on Exhibit 7 to say that they are Japanese symbols.

THE COURT: All right. I heard Mr. Fairfield say that the four markings, I suppose, to the right of the letters "T" and apparently around the corner from

the box on top of that building, whatever it is, are in Japanese.

In any event, proceed.

BY MR. FAIRFIELD:

Q. Now, Mr. Agrell, you subsequently made some notations on Exhibit No. 20 which is in Swedish in your handwriting.

A. Yes.

Q. I think that in your handwriting you even wrote the letters "TEC". Take a look at Exhibit 20.

A. Yes, there is an "F" over the "C".

Q. When you wrote over the letters "TEC" you still did not see the letters "TEC"?

A. I didn't see them.

Q. Now, when did you make these notations which are on Exhibit 20? It is in your handwriting, isn't it?

A. Yes.

Q. When were these notations made?

A. As soon as I got the information from our patent department within the company because I didn't know what these two patents were about.

Q. Well, now, that would be — may I have a date on that approximately?

A. Sometime between the 1st and the 17th of December before the answer.

Q. All right, and so the notations there that were made on Exhibit No. 20 were made between the —

A. The letter arrived on the 1st of December, 1964, and it was answered on the 17th of December, 1964.

Q. So it was made between those particular dates.

A. Yes.